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7 Attorneys for Plaintiff
United States of America

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 PEDRO MERGIL-VARGAS,
T/N Arnulfo Martinez-Segovia,

14 Defendant.

) Criminal Case No. 08CR2422-WQH

) Date: September 2, 2008

) Time: 2:00 p.m.

) Place: Courtroom 4

) The Honorable William Q. Hayes

) **UNITED STATES' NOTICE OF MOTIONS
AND MOTIONS FOR:**

-) (1) **FINGERPRINT EXEMPLARS;**
) (2) **RECIPROCAL DISCOVERY; AND**
) (3) **LEAVE TO GRANT FURTHER**
) **MOTIONS**

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PLEASE TAKE NOTICE that on September 2, 2008, at 2:00 p.m., or as soon thereafter as
counsel may be heard, plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen
P. Hewitt, United States Attorney, and Joseph J.M. Orabona, Assistant United States Attorney, will
move the Court to enter an order granting the following motions.

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MOTIONS

1 The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, KAREN P.
2 HEWITT, United States Attorney, and Joseph J.M. Orabona, Assistant United States Attorney, hereby
3 moves this Court for an order granting the following motions for:

- 4 1. Fingerprint Exemplars;
- 5 2. Reciprocal Discovery; and
- 6 3. Leave to File Further Motions

7 The motions noted above are based on the files and records of this case, together with the a
8 separately captioned statement of facts and memorandum of points and authorities.

9 DATED: August 11, 2008

10 Respectfully submitted,

11 KAREN P. HEWITT
12 United States Attorney

13 /s/ Joseph J.M. Orabona
14 JOSEPH J.M. ORABONA
15 Assistant United States Attorney
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United States of America
8

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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,)	Criminal Case No. 08CR2422-WQH
)	
13 Plaintiff,)	Date: September 2, 2008
)	Time: 2:00 p.m.
14 v.)	Place: Courtroom 4
)	
15)	The Honorable William Q. Hayes
)	
16 PEDRO MERGIL-VARGAS,)	STATEMENT OF FACTS AND
T/N Arnulfo Martinez-Segovia,)	MEMORANDUM OF POINTS AND
17 Defendant.)	AUTHORITIES
)	
18)	
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20)	

21 The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, KAREN P.
22 HEWITT, United States Attorney, and Joseph J.M. Orabona, Assistant United States Attorney, hereby
23 files its Motions in the above-referenced case for (1) Fingerprint Exemplars; (2) Reciprocal Discovery;
24 and (3) Leave to File Further Motions. These motions are based on the files and records of this case
25 together with the attached statement of facts and memorandum of points and authorities.

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I**STATEMENT OF THE CASE**

On July 23, 2008, a federal grand jury in the Southern District of California returned an Indictment charging Pedro Martinez-Vargas, true name Arnulfo Martinez-Segovia (“Defendant”), with attempted entry after deportation in the United States, in violation of 8 U.S.C. § 1326(a) and (b). On July 25, 2008, Defendant was arraigned on the Indictment and pled not guilty. The United States hereby files the following motions for fingerprint exemplars, reciprocal discovery and leave to file further motions.

II**STATEMENT OF FACTS****A. OFFENSE CONDUCT****1. Apprehension at “The 76 Road”**

On June 2, 2008, at approximately 1:50 a.m., Border Patrol Agent L. Contreras responded to a call in reference to a subject heading north of the area known as “The 76 Road.” Border Patrol agents know that this area is commonly used by illegal aliens trying to further their entrance into the United States. “The 76 Road” is approximately four miles west of the San Ysidro, California, Port of Entry and approximately two hundred yards north of the United States/Mexico international border fence. After arriving in the area, Agent Contreras walked along the brush line for a few hundred yards when he came upon an individual trying to conceal themselves in the brush. Agent Contreras identified himself as a United States Border Patrol Agent and asked the individual what country he was a citizen of and whether he had any documents to enter or remain in the United States legally. The individual, later identified himself as Pedro Mergil-Vargas, Defendant, freely admitted that he was a citizen and national of Mexico without any immigration documents that would allow him to enter or remain in the United States legally. At approximately 2:00 a.m., Agent Contreras placed Defendant under arrest and transported to the Imperial Beach Border Patrol Station for processing.

2. Post-Arrest Statements

On June 2, 2008, at approximately 7:00 a.m., Agent Z. Legler, with Agents M. Quintero and J. Beaulieu present, informed Defendant of his Miranda rights in the Spanish language. Defendant stated

1 that he understood his Miranda rights and he agreed to answer questions without the presence of an
2 attorney. Defendant admitted that he is a citizen and national of Mexico and that he did not have
3 immigration documents that would allow him to enter or remain in the United States legally.

4 At approximately 9:40 a.m., Defendant was advised that he was being charged criminally, and
5 Agent Legler again advised Defendant of his Miranda rights prior to recording Defendant's sworn
6 statement. Defendant agreed to waive his rights and speak with the agents without the presence of
7 counsel. Defendant executed a sworn written statement. Defendant stated that his true and correct name
8 was Pedro Mergil-Vargas, and admitted that he had used other names – particularly Arnulfo Martinez-
9 Segovia. Defendant said he was a citizen of Mexico and was born on March 4, 1955 in Rodeo,
10 Durango, Mexico. Defendant admitted he had been previously deported from the United States to
11 Mexico. Defendant also admitted that he had not applied for nor received any prior authorization from
12 the United States to return after his last deportation.

13 **3. Defendant Informed the Court of His True Name**

14 On July 15, 2008, Defendant informed Magistrate Judge Leo S. Papas that his true and correct
15 name was Arnulfo Martinez-Segovia, and not Pedro Mergil-Vargas, as he had told the Border Patrol
16 agents, in his sworn statement, on June 2, 2008. According to Defendant's criminal history, Defendant
17 has used approximately thirty-seven different aliases.

18 **B. DEFENDANT'S IMMIGRATION HISTORY**

19 A records check confirmed that Defendant is a citizen and national of Mexico, and that
20 Defendant was ordered excluded, deported, and removed from the United States to Mexico pursuant to
21 an order issued by an immigration judge on February 18, 1993. Defendant was physically removed
22 from the United States to Mexico on at least ten prior occasions – most recently on September 4, 2007.
23 After Defendant's last deportation, there is no evidence in the reports and records maintained by the
24 Department of Homeland Security that Defendant applied to the U.S. Attorney General or the Secretary
25 of the Department of Homeland Security to lawfully return to the United States.

26 As detailed in the criminal history below, Defendant has multiple aggravated felonies over the
27 past thirty years, including robbery and possession of a controlled substance for sale.

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C. DEFENDANT'S CRIMINAL HISTORY

Defendant has an extensive criminal history. The United States, propounds that Defendant has at least thirteen criminal history points placing him in Criminal History Category VI.

CONVICT DATE	COURT OF CONVICTION	CHARGE	TERM
07/16/1975	CASC Los Angeles	Cal. PC § 381 – Inhalation of Poisonous Fumes (Misdemeanor)	3 days jail, 2 yrs probation
07/20/1978	CASC Los Angeles	Cal. PC § 459 – Second-Degree Burglary (Felony)	120 days jail, 3 yrs probation
05/24/1979	CASC Los Angeles	Cal. H&S § 11355 – Possession of a Controlled Substance (Misdemeanor)	1 yrs probation (ss)
		05/22/1980: Probation revoked	270 days jail
11/27/1979	CASC Los Angeles	Cal. PC § 211 – Robbery (Felony)	2 years prison
11/05/1984	CASC Los Angeles	Cal. PC § 487.1 – Grand Theft of Property (Felony)	365 days jail, 5 yrs probation
		04/30/1986: Probation revoked	2 years prison
02/10/1986	CAMC Huntington Park	Cal PC § 484(A) – Petty Theft (Misdemeanor)	20 days jail
02/11/1986	CAMC Huntington Park	Cal H&S § 11550(B) – Under Influence of Controlled Substance (Misdemeanor)	120 days jail, 3 yrs probation
04/30/1986	CASC Los Angeles	Cal H&S § 11351 – Possess Controlled Substance for Sale (Felony)	3 years prison
08/31/1989	CAMC Huntington Park	Cal PC § 459 – Burglary (Misdemeanor)	90 days jail (ss)
		Cal PC § 148.9(A) – False ID (Misd.)	30 days jail (ss)
06/28/1990	CAMC Downey	Cal PC § 484(A) – Theft of Personal Property (Misdemeanor)	60 days jail (ss), 1 yr probation
10/17/1990	CAMC Downey	Cal PC § 484(A) – Theft (Misdemeanor)	4 days jail (ss), 1 yr probation
01/08/1992	CASC Los Angeles	Cal PC § 484(A) and 666 – Petty Theft with Prior Jail (Felony)	2 years prison
10/24/1994	CASC Los Angeles	Cal PC § 459 – Second-Degree Burglary with Prior (Felony)	7 years prison
11/28/1994	CASC Los Angeles	Cal PC § 484 and 666 – Petty Theft with Prior (Felony)	7 years prison (concurrent)
05/26/2004	CASC Downey	Cal PC § 484 and 666 – Petty Theft with Prior (Felony)	32 months prison
		10/24/2007: Parole violated	Finish term

III

MEMORANDUM OF POINTS AND AUTHORITIES

A. MOTION FOR FINGERPRINT EXEMPLARS

The United States requests that the Court order that Defendant make himself available for fingerprinting by the United States' fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal and immigration records in Section 1326 prosecution). Identifying physical characteristics, including fingerprints, are not testimonial in nature and the collection and use of such evidence would not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969). See also Schmerber v. California, 384 U.S. 757, 761 (1966) (withdrawal of blood is not testimonial).

B. MOTION FOR RECIPROCAL DISCOVERY

The United States hereby requests Defendant deliver all material to which the United States may be entitled under Fed. R. Crim. P. 16(b) and 26.2.

1. Defendant's Disclosures Under Fed R. Crim. P. 16(b)

The United States has voluntarily complied and will continue to comply with the requirements of Fed. R. Crim. P. 16(a). As of the date of this Motion, the United States has produced 78 pages of discovery (including reports of the arresting officers and agents, criminal history reports, documents concerning Defendant's prior convictions and immigration history) and one DVD-ROM containing Defendant's videotaped, post-arrest statements. As of the date of this Motion, the United States is awaiting receipt of Defendant's Alien File ("A-File") and has ordered tapes of Defendant's prior deportation. As such, the United States intends to provide additional discovery after it has had an opportunity to review Defendant's A-File and deportation tapes.

As of the date of this Motion, the United States has **not** received any reciprocal discovery from Defendant. Therefore, the United States invokes Fed. R. Crim. P. 16(b), requiring that reciprocal discovery be provided to the United States. The United States hereby requests Defendant permit the United States to inspect, copy, and photograph any and all books, papers, documents, photographs, tangible objects, or make copies of portions thereof, which are within the possession, custody or control

1 of Defendant and which Defendant intends to introduce as evidence in his case-in-chief at trial.

2 The United States further requests that it be permitted to inspect and copy or photograph any
3 results or reports of physical or mental examinations and of scientific tests or experiments made in
4 connection with this case, which are in the possession or control of Defendant, which he intends to
5 introduce as evidence-in-chief at the trial, or which was prepared by a witness whom Defendant intends
6 to call as a witness. Because the United States will comply with Defendant's request for delivery of
7 reports of examinations, the United States is entitled to the items listed above under Fed. R. Crim. P.
8 16(b)(1). The United States also requests that the Court make such order as it deems necessary under
9 Fed. R. Crim. P. 16(d)(1) and (2) to ensure that the United States receives the discovery to which it
10 is entitled.

11 **2. Witness Statements Under Fed. R. Crim. P. 26.2**

12 Fed. R. Crim. P. 26.2 requires the production of prior statements of all witnesses, except a
13 statement made by Defendant. Fed. R. Crim. P. 26.2 requires reciprocal production of statements, in
14 accordance with the Jencks Act.

15 The timeframe established by Fed. R. Crim. P. 26.2 requires the statement to be provided after
16 the witness has testified. In order to expedite trial proceedings, the United States hereby requests
17 Defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before
18 trial to be set by the Court. Such an order should include any form in which these statements are
19 memorialized, including but not limited to, tape recordings, handwritten or typed notes and/or reports.

20 **C. MOTION FOR LEAVE TO FILE FURTHER MOTIONS**

21 Should new information or legal issues arise, the United States respectfully requests the
22 opportunity to file such further motions as may be appropriate.

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IV

CONCLUSION

For the foregoing reasons, the United States requests the Court grant the United States' Motions for Fingerprint Exemplars, Reciprocal Discovery and Leave to File Further Motions.

DATED: August 11, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

/s/ Joseph J.M. Orabona
JOSEPH J.M. ORABONA
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA) Criminal Case No. 08CR2422-WQH
)
Plaintiff,)
) **CERTIFICATE OF SERVICE**
v.)
)
PEDRO MERGIL-VARGAS,)
T/N Arnulfo Martinez-Segovia,)
)
Defendant.)
_____)

IT IS HEREBY CERTIFIED that:

I, Joseph J.M. Orabona, am a citizen of the United States and am at least eighteen years of age.
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of the **United States' Notice of Motions and Motions** For (1) Fingerprint Exemplars; (2) Reciprocal Discovery; and (3) Leave to File Further Motions; together with the separately captioned Statement of Facts and Memorandum of Points and Authorities on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Gary Edwards
Law Offices of Gary Edwards
6445 Avenida Cresta
La Jolla, California 92037
Tel: (858) 456-4403
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Lead Attorney for Defendant

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 11, 2008.

/s/ Joseph J.M. Orabona
JOSEPH J.M. ORABONA
Assistant United States Attorney